



A Closer Look At Congressional Investigations

Insights

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For the past few weeks, the news media has been fixated on the Congressional investigation and hearings into purported defects in Toyota vehicles. But why is it such a big story? In reality, Congress has held hundreds of investigative hearings during the past few years on matters involving nearly every industry. This article will review – in very basic detail – Congress's power to conduct an investigative hearing, the limitations on those powers, and the practical effects of a Congressional investigation.

The Power To Investigate

We all know that the primary role of Congress is to pass legislation. As part of that role, Congress also has the capacity to conduct hearings and investigations. The power to investigate is not explicitly referenced in the text of the Constitution. Article I, § 8 of the Constitution simply provides that Congress has the authority "To make all Laws which shall be necessary and proper." But the Supreme Court's broad interpretation of the role clearly provides the authority for Congressional investigation into substantive matters.

In what is perhaps the most important case on this subject, Justice Willis Van Devanter noted that in legislative practice the power to secure needed information by means of investigations "has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the Colonial legislatures before the American Revolution; and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state legislatures." *McGrain v. Daugherty*.

Congress has delegated the power to initiate and conduct investigations and issue subpoenas for both documents and testimony to all of its standing committees and subcommittees. House and Senate rules afford those committees broad powers to conduct investigative proceedings. For instance, Senate Rule XXVI sets forth many of the hearing regulations to which committees must conform, including the quorum requirement, advance submission of witness statements, the opportunity for minority party Senators to call witnesses of their choosing, and procedures for closing a hearing to the public. Each committee is authorized to hold hearings and has broad discretion in doing so.

The typical chronology consists of an investigation, followed by a hearing, and then, for the most important investigations, a committee report detailing the results of the investigation and often calling for legislative changes which may or may not be implemented. Once an investigation is commenced, which can occur in any number of ways, there is no standard format that will be followed. A hearing is not like a formal legal proceeding; questions are tightly scripted and the subject of the hearing often has little chance to state his or her position. If a person does not comply with a committee's investigative demands, the committee may hold the person in contempt.

Limitations On Investigations

Though broad, Congress's investigative powers are subject to well-recognized limitations. In *Quinn v. United States*, the Supreme Court stated that the power to investigate "cannot be used to inquire into private affairs unrelated to a valid legislative purpose" and that it does not "extend to an area in which Congress is forbidden to legislate." The Court further stated that "the power to investigate must not be confused with any of the powers of law enforcement," which are assigned by the Constitution to the executive and the judiciary. Further limitations include the First, Fourth, and Fifth Amendments to the Constitution, as well as attorney-client privilege.

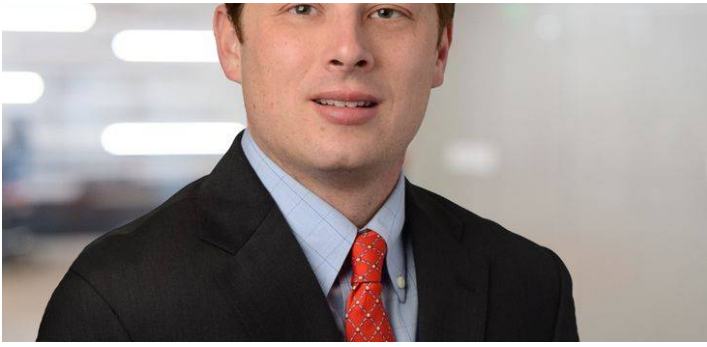
Practical Effects Of A Congressional Investigation

Recent years have seen widespread criticism of Congressional investigating committees, especially when their actual purpose seems to be subjecting individuals to public exposure rather than obtaining information necessary to legislate. The Congressional hearings on the issue of steroids in baseball is a good example. While any long-term changes were necessarily going to be implemented by a collective bargaining agreement between the players' union and management, Congress took advantage of the public outcry by "addressing" the issue through its investigatory power.

Of course, the players' union and the owners reached an agreement on steroids, thus showing the practical effect of a congressional investigation: to move entities into action. Other effects, unfortunately, often include additional investigations and lawsuits. As all automobile manufacturers are already committed to producing products of the highest possible quality, it is helpful to keep in mind that Toyota is not the only automobile manufacturer to recently issue a widespread recall. In March 2010, GM recalled approximately 1.3 million cars. To the extent that a similar investigation is not conducted into GM, it may be helpful to remember a fundamental truth about Congressional investigations: they are not judicial fact-finding proceedings searching for truth; rather, they are mainly driven by political considerations.

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